

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel.,

G. ISAAC SPONAUGLE, III,  
West Virginia citizen and taxpayer,

Petitioner,

v.

Civil Action No. 2018-P-442  
Charles E. King, Jr., Judge

JAMES CONLEY JUSTICE, II,  
Governor of the State of West Virginia,

Respondent.

**ORDER DENYING MOTION TO DISMISS**

On the 5<sup>th</sup> day of June, 2019, came the Petitioner, G. Isaac Sponaugle, III ("Petitioner"), pro se, and Respondent, James Conley Justice, II, Governor of the State of West Virginia ("Respondent"), by counsel, Michael W. Carey and David R. Pogue of Carey, Scott, Douglas & Kessler, PLLC, for a hearing on Respondent's Motion to Dismiss.

Upon careful consideration of the pleadings, the applicable law, and the argument of counsel, this Court finds as follows:

1. The Respondent filed the motion to dismiss Petitioner's Petition for Writ of Mandamus pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure.
2. "[T]he singular purpose of a Rule 12(b)(6) motion is to seek a determination of whether the Plaintiff is entitled to offer evidence to support the claims made in the Complaint." Dimon v. Mansy, 198 W.Va. 40, 48, 479 S.E.2d 339, 347 (1996).
3. The Respondent's motion requires this Court to appraise the sufficiency of the Petition for Writ of Mandamus, and this Court must refrain from dismissing the Petition for Writ of

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Mandamus “unless it appears beyond doubt that the plaintiff can prove no set of facts to support [its] claim which would entitle [it] to the relief” sought. State ex rel Smith v. Kermit Lumber & Pressure Treating Company, 200 W.Va. 221, 226, 488 S.E.2d 901,906 (1997), quoting, Syl Pt. 3, Chapman v. Kane Transfer Co., 160 W.Va. 530, 236 S.E.2d 207 (1977).

4. Further, this Court is required to look only to the content of the Petition for Writ of Mandamus in appraising the sufficiency of the Petition for Writ of Mandamus. Syl Pt. 2, Par Mar v. The City of Parkersburg, 183 W.Va. 706, 398 S.E.2d 532 (1990).

5. Applying these legal standards to the Petition, as this Court must do, the Court believes that claims set forth in the Petition for Writ of Mandamus are sufficient to withstand a motion under West Virginia Rule of Civil Procedure 12(b)(6). This Court believes that the allegations, viewed in the light most favorable to the Petitioner, are sufficiently pled and could provide theories under which relief could be granted.

Wherefore, the Court does hereby **ORDER** that the Respondent’s Motion to Dismiss is **DENIED**.

The Court does **FURTHER ORDER** that pursuant to this Court’s Order of June 17, 2019, Respondent shall respond to the Petitioner’s first set of discovery requests within thirty days of the date of this Order.

The Court does **FURTHER ORDER** that Respondent shall file his Answer to the Petition for Writ of Mandamus within ten (10) days of the date of this Order.

The Court does **FURTHER ORDER** that a certified copy of this Order be sent to all parties or counsel of record.

The Court notes the objection and exception of the party or parties aggrieved by this

Order.

Entered this 17<sup>TH</sup> day of July, 2019.

  
CHARLES E. KING, JR., JUDGE

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 17<sup>th</sup>

DAY OF July 2019  
Cathy S. Gatson CLERK  
CLERK OF CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

By KR

Date: 7-17-19  
Certified copies sent to:  
☒ court of record  
☐ press  
☐ other (please indicate)  
By: J. Sponaugle  
M. Carey  
D. Pogue  
☒ certified / not elated mail  
☐ fax  
☐ hand delivery  
☐ internet / computer  
Other dispatches accomplished:  
X  
Deputy Circuit Clerk

7-17-19 Faxed to J. Sponaugle / M. Carey / D. Pogue (10)